

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS- EASTERN DIVISION**

DARRELL BYTHER,

Plaintiff,

v.

ERNESTINE B. BECK-FULGHAM, both
individually and in her official capacities as
Village Manager, JOSEPH ROUDEZ III, both
individually and in his official capacities as
Mayor, and UNIVERSITY PARK,

Defendants.

Case No. 23-cv-05807

The Honorable Judge Charles P. Kocoras

**DEFENDANTS' MOTION TO DISMISS
COUNTS I, IV, V, VI AND VII OF PLAINTIFF'S COMPLAINT**

NOW COMES DEFENDANTS, ERNESTINE B. BECK-FULGHAM, JOSEPH ROUDEZ III and the VILLAGE OF UNIVERSITY PARK, by and through their attorneys Odelson, Murphey, Frazier & McGrath, LTD. and move this Honorable Court to dismiss Counts I, IV, V, VI and VII of Plaintiff's Complaint pursuant to Fed. R. Civ. P. 12(b)(6), stating as follows in support:

1. Plaintiff filed a nine (9) count Federal Complaint based upon his termination as Director of Public Works for the Village of University Park. [Doc. 001].

2. A Rule 12(b)(6) motion to dismiss challenges a pleading for failing to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). Plaintiff fails to state a claim for retaliation under either Title VII or the IHRA, fails to plead a due process violation and Count VI of his Complaint does not state a recognizable cause of action. Accordingly, these counts must be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

3. Count I is a Title VII retaliation claim. Plaintiff alleges he testified in an internal investigation into the former Police Chief and opposed the Golf Course's stealing of property. Count V is an IHRA retaliation claim based upon the same alleged protected activities. Neither of these activities have anything to do with opposing employment discrimination based upon a protected characteristic, let alone an investigation by an authorized agency into same. Accordingly, Plaintiff fails to establish the requisite engagement in protected activities and Counts I and V must be dismissed.

4. Count IV is a procedural due process claim under the Fourteenth Amendment. Plaintiff fails to make the requisite showing of a protectable property interest. He does not identify any appropriate source of a 'legitimate claim to entitlement' to continued employment and relies upon provisions of the municipal code that are inapplicable to the Director of Public Works and do not otherwise establish a property interest. Plaintiff cannot state a claim for a due process violation without having a protectable property interest and Count IV must be dismissed.

5. Count VI is labeled "42 U.S.C. § 1983 Deprivation based on Associational Retaliation". This claim is based upon Plaintiff's generalized and erroneous statement that "[t]he 14th Amendment to the United States Constitution guarantees Byther the right to be free from retaliation for protected activity." [Doc. 001 ¶ 123]. Not only is this an incorrect statement of law, but Plaintiff fails to identify with any specificity what "protected activities" he engaged in that form the basis for this claim. Count VI does not state a cognizable cause of action under §1983 and must be dismissed.

6. Count VII is a *Monell* claim against the Village of University Park for "Associational Retaliation" under § 1983. Plaintiff has failed to state an underlying cause of action for

“associational retaliation” in Count VI and therefore the Village cannot be liable for same. Accordingly, Count VII must be dismissed.

7. Defendants additionally submit their Memorandum of Law in Support of this motion.

WHEREFORE, for all the foregoing reasons, Defendants respectfully request that this Honorable Court grant their motion to dismiss, dismiss counts I, IV, V, VI and VII, and grant any other relief this Court deems equitable and just.

Respectfully Submitted,

**ERNESTINE B. BECK-FULGHAM
JOSEPH ROUDEZ III
THE VILLAGE OF UNIVERSITY PARK**

By: /s/ Lauren M. DaValle
One of their attorneys

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